

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 29, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP476**

**Cir. Ct. No. 2015SC8550**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**CITY OF MILWAUKEE,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CRYSTAL PUTMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

¶1 CURLEY, P.J.<sup>1</sup> Crystal Putman, *pro se*, appeals an eviction judgment entered against her. She argues that the City of Milwaukee (City) failed

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14).

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

to properly serve her with the Small Claims Summons and Complaint. Putman's briefs reflect that she does not understand she can only appeal the denial of her WIS. STAT. § 806.07 motion and not the eviction itself. The time for an appeal of an eviction action as set forth in WIS. STAT. § 799.445 is fifteen days from the entry of judgment. Thus, her appeal of the eviction judgment is untimely.

¶2 Putman's appeal must fail. First, the issue she raises on appeal is not one that was presented below and this court will generally not entertain issues not raised below. Second, a review of the record reveals the trial court did not erroneously exercise its discretion when denying her motion. The trial court's decision is affirmed.

### BACKGROUND

¶3 The City obtained the title to the property located at 2730 North 47th Street by way of a tax foreclosure. A letter dated November 13, 2014, was sent to the "occupant" of the aforementioned address advising that the City had obtained ownership of the property via a tax foreclosure and that an inspection of the property was to be done in the next few weeks. The letter stated that after the inspection, the City may offer the resident a lease or the resident will be given notice to vacate.

¶4 A letter addressed to Crystal Putman dated December 17, 2014, explained that the inspection had taken place, the City would not be giving Putman a lease, and that all occupants needed to vacate the property by January 31, 2015. This letter also included an advisal in bold typing that said: **"When you vacate, you must notify our Property Management Section and your keys must be hand-delivered or mailed by certified mail to Department of City Development, 809 North Broadway, 2nd floor, Milwaukee, WI, 53202."** A 28-

Day Notice to Vacate, dated December 22, 2014, also addressed to Crystal Putman, was mailed to her address. It included the identical language in stamped bold typeface concerning the fact that the premise would not be considered vacant until the keys were turned in via certified mail or in-person delivery to the Department of City Development. Both notices contained the Department's address.

¶5 The record also contains an affidavit entitled "SERVICE BY POSTING." In the body of the document, a process server averred that he was unable to personally serve Crystal Putman after three attempts to do so on two different days at the North 47th Street address. The affidavit goes on to state that on December 24, 2014, at 10:52 a.m. at 2730 North 47th Street, "I served CRYSTAL PUTMAN by posting in a conspicuous manner the 28 Days Notice to Vacate on the front door or door being identified as the main entrance to the building in accordance with the rules and or orders of the above listed court." The process server then attested that he placed "a true copy thereof enclosed in a sealed envelope, with Certified Mail postage thereon fully prepaid, in the United States Mail ... addressed" to Crystal Putman.<sup>2</sup> The affidavit was sworn to in front of a notary public.

¶6 When no keys were returned, the City filed a small claims eviction action against Putman on April 6, 2015. In the moving papers, the City claimed that Putman did not vacate the premises located at 2730 North 47th Street by January 31, 2015. The City also sought damages. Another affidavit from a

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<sup>2</sup> Contrary to the affidavit, the trial court maintained that the affidavit was not sent by certified mail. It is unknown whether the trial court was mistaken or the affidavit was in error.

process server is contained in the file. The process server stated that he attempted to serve all occupants with the Small Claims Summons and Complaint on three separate dates at the address on North 47th Street without success. He explained that he then posted the summons and complaint in a conspicuous manner and, in addition, he mailed a copy to the occupants of 2730 North 47th Street by certified mail.

¶7 When no answer was filed, the City obtained a default judgment and a writ of restitution was executed by the sheriff on May 12, 2015. According to the sheriff's report, the tenant was no longer living in the premises and entry was made by an open window. Nothing of value remained in the premises. In June 2015, the City served Putman by publication a notice that a hearing was going to be held on June 23, 2015, on the City's remaining causes of action. A copy of this notice was also sent to the 47th Street address. On June 25, 2015, the City obtained judgment against Putman for \$3657.54. Included in this amount were expenses the City incurred for: (1) the sheriff to execute the writ of restitution; (2) a mover; (3) an expense for publishing the notice; and (4) monthly rent calculated at \$30.00 per day from February 1, 2015, thru the date of the judgment.

¶8 On January 15, 2016, a motion was filed on Putman's behalf seeking to reopen the judgment pursuant to WIS. STAT. § 806.07(1)(a). In this motion, she also sought to seal the CCAP record of her eviction. In her motion, she claimed that:

4. The defendant vacated the property on February 1<sup>st</sup> as required by the notice. She attempted to notify the property manager at the Department of City Development, Deborah McCollum-Gathing, by phone but could only leave voicemails. She assumed the problem was related to the Snow Emergency declared by the City on February 1<sup>st</sup>. (Footnote omitted.)

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6. The City of Milwaukee filed this eviction action on April 2<sup>nd</sup>, 2015, but Ms. Putman never received actual notice of the action. All attempts at personal service were at the vacated property. The summons was posted at the vacated property on April 9 and mailed on April 10....

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8. [She] had no knowledge about the eviction action, the defendant did not appear at the April 28, 2015 return date, resulting in a default judgment and a writ of restitution.

A hearing was held on February 16, 2016, on Putman's motion to reopen the judgment. At the hearing, Putman explained that she was aware of the 28-day notice but never actually saw it herself. She told the court her daughter found it posted to the door and read it to her, but never read the part of the notice which states the premises is not considered vacant unless you turn in the keys by certified mail or in person delivery to the department. Putman told the trial court she called a department worker and left a voicemail saying she vacated. Putman also told the trial court that she never got any mail at the 47th Street property because the mail service was poor. Instead, she was using a different mailing address and she never forwarded her mail for the 47th Street property. The trial court expressed some skepticism that Putman never received any mail at her home. The trial court also questioned why Putman never personally read the posted 28-day notice to vacate.

¶9 Ultimately, the trial court denied the motion to reopen because Putman never returned the keys. The trial court found that, under the circumstances, the City had an absolute right to start the eviction action. Consequently, the trial court found there was no good cause to reopen the judgment and no meritorious claim as required by WIS. STAT. § 806.71(1)(a). This appeal follows the denial of the motion to reopen.

## ANALYSIS

¶10 A trial court's order denying a motion for relief under WIS. STAT. § 806.07 will not be reversed on appeal absent an erroneous exercise of discretion. *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 541, 363 N.W.2d 419 (1985). We will not find an erroneous exercise of discretion if the record shows that the trial court exercised its discretion and that there is a reasonable basis for its decision. *Id.* at 542.

¶11 In Putman's brief she claims, for the first time, that the City did not properly serve her with the Small Claims Summons and Complaint. She relies on WIS. STAT. § 801.11(1)(a) for support. WISCONSIN STAT. § 801.11 discusses the manner of serving summons to obtain personal jurisdiction. According to Putman, §§ 801.11(1)(a), (b), and (c)<sup>3</sup> were not followed and she was not

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<sup>3</sup> WISCONSIN STAT. § 801.11 provides for service of a summons to a natural person, as relevant here, by:

(1) NATURAL PERSON. Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

(continued)

properly served with notice of the eviction action.<sup>4</sup>

¶12 In Putman’s Motion to Reopen the Judgment pursuant to WIS. STAT. § 806.07, Putman never argued that service of the small claims summons and complaint was defective. Rather, she contended that she never had actual notice of the eviction action because of a series of circumstances: her daughter read her the 28-day notice but never read the part about returning the keys; she never personally read the notice; she never got any mail at this address; and, consequently, had no forwarding address on file. This court observes that we

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2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant’s post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

<sup>4</sup> The City has argued that this court should dismiss her entire appeal as being untimely. In support, the City cites *Highland Manor Associates v. Bast*, 2003 WI 152, ¶4, 268 Wis. 2d 1, 672 N.W.2d 709, which held that “a tenant in an eviction action who moves for reconsideration must nevertheless take an appeal from the judgment of eviction within the time for appeal set forth in W[IS.] S[TAT.] § 799.445.” Here, however, Putman filed a motion for relief from judgment or order under WIS. STAT. § 806.07, not a motion for reconsideration. Thus, we decline to dismiss her appeal.

generally do not consider legal issues raised for the first time on appeal. *Hopper v. Madison*, 79 Wis. 2d 120, 137, 256 N.W.2d 139 (1977).<sup>5</sup>

¶13 Finally, a review of the trial court's statements supports the court's conclusion that the City correctly followed the law in obtaining an eviction action and a judgment for damages.

¶14 The trial court stated: "But, you know, it's really simple way to -- it's real simple when it says how to vacate it, you know. It's real simple. Return the keys, you know." In addressing the question of whether Putman ever called the property manager, the trial court said: "You know, why would she -- Why would the City go through this if, you know, they knew -- knew she had vacated and surrendered the property? I don't think they would have gone through this." And later the trial court opined: "It says what you need to do. A unit is not considered vacated until the keys are turned in via certified mail or in person to -- and it's in the right corner right on top what you need to do. So I don't think that's really confusing." Further the trial court commented: "I would have changed my address when I moved."

¶15 In conclusion, the trial court said: "I really don't see a basis [for reopening the judgment]. I have to find merit. I have to find good cause. And I don't. And I have to find [a] meritorious defense, and you didn't follow the directions." This court agrees with the trial court. Putman failed to follow the directions given to her in both a letter and a notice posted to her door. She was

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<sup>5</sup> The City argues that Putman cited the wrong statute dealing with service of the eviction complaint. We conclude we need not address this issue as Putman raises a new issue on appeal not raised below. We decline to address her new issue.



negligent in reading the posted notice and in not forwarding her mail. She never returned the keys, and she made it impossible for the City to contact her. Given the circumstances, the trial court appropriately denied the motion to reopen because Putman failed to prove mistake, inadvertence, surprise, or excusable neglect.<sup>6</sup> See WIS. STAT. § 806.07(1)(a).

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

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<sup>6</sup> It should be noted that the trial court urged the City to reduce the daily rent of \$30 a day as the City did not start the eviction for several months. The City offered to reduce the rent by half. Putman refused the offer.

